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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,810	09/12/2006	Adrian Brown	PU60746	1607
20462 7590 04/14/2011 GlaxoSmithKline GLOBAL PATENTS -US, UW2220 P. O. BOX 1539 KING OF PRUSSIA, PA 19406-0939				
EXAMINER				
PALENIK, JEFFREY T				
ART UNIT		PAPER NUMBER		
1615				
NOTIFICATION DATE		DELIVERY MODE		
04/14/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

US_cipkop@gsk.com

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/598,810

Applicant(s)

BROWN ET AL.

Examiner

JEFFREY PALENIK

Art Unit

1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 April 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(g).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: 47-85.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Jeffrey T. Palenik/
Examiner, Art Unit 1615

/Robert A. Wax/
Supervisory Patent Examiner, Art Unit 1615

Continuation of 11, does NOT place the application in condition for allowance because: Applicants' arguments with regard to the rejection of claims 47-85 under 35 USC 103(a) as being unpatentable over the combined teachings of Petereit et al. ('042) and McAllister et al. ('369) have been fully considered but they are not persuasive.

Applicants' initial allegation that "[i]n light of the amendments to claim 47, Petereit would create technical problems for one skilled in the art" because "the new proposed claim [cites that] the amount of Eudragit RL and/or RS as stated in ingredient (i) starts from 20%", is unpersuasive.

Respectfully, the Examiner points out that Applicants' argument contradicts that which is instantly recited, namely that ingredient (i) is a copolymer of Eudragit RS, Eudragit RL, or a combination of both, wherein said copolymer ranges from 10-80% w/w. So regardless of the composition of ingredient (i), its presence does not begin at 20% w/w as asserted. It further remains that optimization of the ranges of Eudragit under the guidance of the reference would have been well within the purview of the ordinarily skilled artisan.

Applicants next argue that neither of the secondary teachings of the McAllister references discloses using blends of different molecular weight HPC. Applicants acknowledge on the record that the references exemplify the use of such HPC blends as KLUCCEL EF and JF. The Examiner, again respectfully disagrees. McAllister ('369) vividly teaches that the composition may employ a variety of different cellulose-based compounds (e.g., hydroxypropylcellulose or HPC), their derivatives and mixtures thereof [0122]. Paragraph [0150] elaborates further that different blends of HPC, the aforementioned examples of "EF" and "JF" blends, are well known in the art. As such, it is at minimum suggested by the reference, if not taught, that a combination of HPC blends may be employed. It is further pointed out that McAllister expressly discloses that the purpose of compounds such as KLUCCEL is for modifying release of the active ingredient. As it is clearly disclosed that different release types (e.g., immediate or longer duration) are envisioned, it is logically concluded by the Examiner that blends of HPC are also similarly envisioned; the ordinarily skilled artisan recognizing that different blends possess different release profiles.

Applicants' arguments with regard to the rejection of claims 47-85 under 35 USC 103(a) as being unpatentable over the combined teachings of Petereit et al. ('042) and McAllister et al. ('311) have also been fully considered but they are not persuasive. Applicants allege that the rejection is moot in light of the amendments made to claim 47 (i.e., for the same reasons discussed in the previous rejection).

The Examiner thus respectfully maintains this rejection for the reasons made of record above.

For these reasons, Applicants' arguments are found unpersuasive. Said rejection is therefore maintained.